

ESTTA Tracking number: **ESTTA85114**

Filing date: **06/13/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045345
Party	Plaintiff CASSEIKO TRADING, INC
Correspondence Address	JEFFREY R. COHEN MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD., STE. 1400 ARLINGTON, VA 22201 cohen@mwzb.com
Submission	Motion to Compel Discovery
Filer's Name	Jeffrey R. Cohen
Filer's e-mail	cohen@mwzb.com, mandell@mwzb.com, docketing@mwzb.com
Signature	/jrc/
Date	06/13/2006
Attachments	Motion to Compel.6.13.06.pdf (21 pages)(512243 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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CASEIKO TRADING, INC.	:	
	:	
Petitioner,	:	
	:	
v.	:	<u>PETITIONER'S MOTION TO COMPEL</u>
	:	<u>RESPONSES TO DISCOVERY</u>
	:	
GUNZINGER BROS. LTD.	:	Cancellation No. 92,045,345
TECHNOS WATCH CO.	:	
WELSCHENROHR	:	
	:	
Registrant.	:	
	:	
	X	

Petitioner Caseiko Trading, Inc. (hereinafter referred to as "Petitioner"), by and through counsel, hereby moves to compel registrant Gunzinger Bros. Ltd. Technos Watch Co. Welschenrohr (hereinafter referred to as "Registrant") to respond to Petitioner's First Set of Interrogatories and Petitioner's First Set of Requests for Production (collectively referred to as "Petitioner's Discovery").

Responses to interrogatories and requests for production must be served within thirty (30) days after the date of service. TBMP § 403.03. If service is made by first class mail, the date of mailing or of delivery is considered to be the date of service, and five (5) extra days are allowed for responding. *Id.*

A party which fails to respond to discovery during the time allotted therefore, and which is unable to show that its failure was the result of excusable neglect, may be found, on motion to compel filed by the propounding party, to have forfeited its right to object to the discovery on its merits. TMBP §§ 405.04(a), 406.04(a).

Petitioner's Discovery was mailed to Registrant via first class mail on April 21, 2006. A copy of Petitioner's Discovery is attached hereto as Exhibit A and incorporated by this reference. The date of service was April 21, 2006. Thirty-five (35) days from service was May 26, 2006.

Registrant received Petitioner's Discovery on April 24, 2006. A copy of the return receipt from Petitioner's Discovery is attached hereto as Exhibit B.

On or around May 31, 2006, Petitioner's counsel called Registrant's counsel to inquire as to the status of Registrant's response to Petitioner's Discovery. *See* "Declaration of Jeffrey R. Cohen," attached hereto as Exhibit C. This phone call was not returned. *Id.* On June 2, 2006, Petitioner's counsel called Registrant's counsel to inquire as to the status of Registrant's response to Petitioner's Discovery. *See* "Declaration of Adam D. Mandell," attached hereto as Exhibit D. This phone call was not returned. *Id.* On the morning of June 5, 2006, Petitioner's counsel called Registrant's counsel to inquire as to the status of Registrant's response to Petitioner's Discovery. *Id.* This phone call was not returned. *Id.* Finally, in the afternoon of June 5, 2006, Petitioner's counsel called Registrant's counsel to inquire as to the status of Registrant's response to Petitioner's Discovery. *See* "Declaration of Jeffrey R. Cohen." It was only after the fourth attempt that Petitioner's counsel was able to reach Registrant's counsel.

During communications between Petitioner's counsel and Registrant's counsel, Registrant's counsel has been unable to provide any reason why Registrant has not responded to Petitioner's Discovery. *See* "Declaration of Jeffrey R. Cohen."

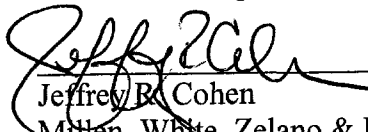
Registrant has failed to respond to Petitioner's Discovery during the time allotted therefore, and is unable to show that its failure was the result of excusable neglect.

For the foregoing reasons, Petitioner respectfully requests that the Board order that Registrant respond to Petitioner's Discovery and that Registrant has forfeited its right to object to Petitioner's Discovery on its merits.

Respectfully submitted,

Caseiko Trading, Inc.

By:



Jeffrey R. Cohen

Millen, White, Zelano & Branigan, P.C.

2200 Clarendon Blvd., Ste. 1400

Arlington, VA 22201

(703) 243-6333

Dated: June 13, 2006

Attorney for Petitioner

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Petitioner's Motion to Compel Responses to Discovery has been served on Registrant by mailing said copy on June 13, 2006, via first class mail, postage prepaid, to:

EXHIBIT A

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.

LAW OFFICES

2200 CLARENDON BOULEVARD
SUITE 1400
ARLINGTON, VIRGINIA 22201

I. WILLIAM MILLEN
JOHN L. WHITE
ANTHONY J. ZELANO
JOHN R. MOSES
HARRY B. SHUBIN
BRION P. HEANEY
RICHARD J. TRAVERSO
ALAN E. J. BRANIGAN
RICHARD M. LEBOVITZ
JOHN A. SOPP
JEFFREY R. COHEN
JEFFREY A. SMITH
SCOTT J. MAJOR
DANIEL E. FISHER¹
MICHAEL S. CULVER

PHONE: 703/243-6333
TELECOPIER: 703/243-6410
E-MAIL: MAIL@MWZB.COM

CSABA HENTER¹
ADAM D. MANDELL
JENNIFER J. BRANIGAN²

COPY

April 21, 2006

VIA CERTIFIED MAIL

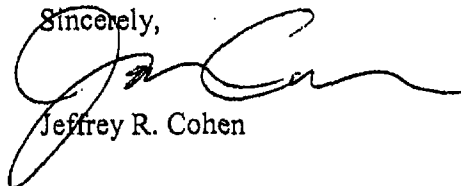
Linda L. Berkowitz
Ladas & Parry
26 W 61st Street
New York, New York 10023

RE: Cancellation No. 92045345, Reg. No. 2389268
Caseiko Trading, Inc. v. Gunsinger Bros. Ltd. Technos Watch Co. Welschenrohr
O/Ref.: CASEIKO-0006-L

Dear Ms. Berkowitz:

Please find enclosed Petitioner's First Set of Interrogatories and First Set of Requests for Production for the above-referenced proceeding.

Sincerely,



Jeffrey R. Cohen

Enclosures

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 2,389,268, Serial No. 75/610297
Filed: December 22, 1998
Registered: September 26, 2000
For Mark: SKYMASTER

-----X	
CASEIKO TRADING, INC.	:
	:
Petitioner,	:
	:
v.	:
	:
GUNZINGER BROS. LTD.	:
TECHNOS WATCH CO.	:
WELSCHENROHR	:
	:
Registrant.	:
-----X	

PETITIONER'S FIRST SET OF INTERROGATORIES

Cancellation No.: 92045345

Pursuant to TMBP 405.01, Petitioner Caseiko Trading, Inc. (hereinafter referred to as "Petitioner") submits the following interrogatories to Registrant Gunzinger Bros. Ltd. Technos Watch Co. Welschenrohr.

INSTRUCTIONS AND DEFINITIONS OF TERMS

1. As used in these interrogatories, the term "Registrant" means Gunzinger Bros. Ltd. Technos Watch Co. Welschenrohr and includes all other business entities and/or individuals subsidiary to, parent to, or affiliated with Registrant including, without limitation, all predecessor(s) in interest, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Registrant.
2. As used in these interrogatories, the term "Mark" means the name, brand and/or mark SKYMASTER, alone or in connection with other word or design elements.

3. As used in these interrogatories, the term "Registrant's Goods and Services" means the following goods and services: watches, movements of watches, and their parts.

4. As used in these interrogatories, the term "Priority Date" means the following date: June 22, 1998.

5. As used in these interrogatories, the term "Documents" or "all documents" means all documents available to Registrant including, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all originals, copies or drafts, and (2) originals, copies or drafts on which appear any notes or writings placed thereon after the document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Registrant, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer discs or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, e-mail messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries of interviews, reports and/or summaries of investigations, prior art searches and results thereof, including discussions or analysis thereof, opinions or reports of consultants or consulting engineers, agreements and contracts, brochures, pamphlets, advertisements and letters to the trade, and including any tangible things within the scope of the TMBP.

Any document bearing on any sheet or side thereof any marks and not a part of the original text or any reproduction thereof, is to be considered a separate document for purposes of responding to a specific document request.

6. Documents "relating to" or which "relate to" any given matter mean documents which constitute, contain, discuss, embody, comment upon, identify, refer to, concern or are otherwise pertinent to that matter.

7. Wherever in the following interrogatories Registrant is asked to identify documents, it is requested that the documents be identified by stating: a) general type of document, *e.g.*, letter, memorandum, report, miscellaneous, notes, etc.; b) date; c) author; d) organization, if any, with which the author was connected; e) addressee or recipient; f) other distributees; g) organization, if any, with which addressee or recipient, or distributees were connected; h) general nature of the subject matter to the extent that Registrant can do so without divulging matter considered by it to be privileged; and i) present location of such document and each copy thereof known to Registrant, including the title, index number and location, if any, of the file in which the document is kept by the Registrant or the file from which such document was removed, if removed for the purposes of this proceeding, and the identity of all persons responsible for the filing or other disposition of the document.

8. Should Registrant deem to be privileged any documents concerning information which is requested by any of the following interrogatories, Registrant shall list such documents and supply information as requested in Paragraph 7 above concerning such documents and additionally shall indicate that they claim privilege therefore, briefly state the nature of the document, the sender, the author, the recipient of

each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Registrant associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Board to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document.

9. Each of the separate interrogatories herein is deemed to seek separate answers and responses as of the date they are answered. However, these interrogatories shall be deemed to be continuing and any additional information relating in any way to these interrogatories and to events occurring or documents existing prior to the filing of the Petition which Registrant acquires or which becomes known to Registrant up to and including the close of discovery shall be furnished to Petitioner within a reasonable time after such information is acquired or becomes known. Registrant's response to these interrogatories is to be promptly supplemented to include subsequently acquired information in accordance with the requirements of the TMBP.

INTERROGATORIES

1. State the names and present addresses of all persons having knowledge of the facts relevant or material to the subject matter of this proceeding; and, as to each person, state or summarize the facts of which said person is contended to have knowledge.

2. With regard to Registrant, state the following:

a) The date of its formation;

- (a) The identity of each of its officers from Priority Date to the present, setting forth the position that each officer held and the dates each officer held such position; and
 - (b) The location of its principal place of business.
- 3. State the dollar amount of Registrant's gross income derived from exploitation of the Mark since Registrant's inception.
 - (a) Identify the approximate date, month and year in which such amount was derived.
 - (b) Identify the country of origin of such amount.
- 4. Identify all goods and/or services marketed by Registrant that have used the Mark.
 - (a) Identify the approximate date, month and year in which such goods and/or services were marketed by Registrant.
 - (b) Identify the country in which such goods and/or services were marketed.
- 5. Identify those persons who are knowledgeable regarding Registrant's adoption of the Mark as used in connection with Registrant's Goods and Services in the United States; and, as to each person, state present contact information.
- 6. Identify the amount of money and the efforts expended in advertising, marketing or promoting the Mark in connection with Registrant's Goods and Services within the United States. Identify the approximate date, month and year in which such money and/or efforts were expended.

7. For each date since the Priority Date, identify Registrant's use of the Mark in connection with Registrant's Goods and Services within the United States. Identify the approximate date, month and year in which such use was made.

8. For each date since the Priority Date, identify Registrant's use of the Mark in the United States. Identify the approximate date, month and year in which such use was made.

9. Identify all documents relating to a lack of Registrant's intent to resume use of the Mark in the United States in connection with Registrant's Goods and Services.

10. Identify all documents relating to Registrant's intent to use the Mark in the United States in connection with Registrant's Goods and Services.

11. Identify all individuals who assisted in the preparation of the answers to these interrogatories.

12. Identify all individuals who assisted in the preparation of your responses to Petitioner's requests for production of documents and/or requests for admissions, if any.

13. Identify all documents that you reviewed and/or relied upon to assist you in preparing the answers to these interrogatories.

Respectfully submitted,

Caseiko Trading, Inc.

By: 

Jeffrey R. Cohen, Esquire

Millen, White, Zelano & Branigan, P.C.

2200 Clarendon Blvd., Ste. 1400

Arlington, Virginia

(703) 243-6333

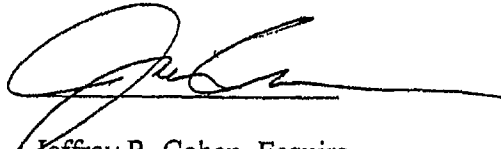
Attorneys for Petitioner Caseiko Trading, Inc.

This 21st day of APRIL, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served on
Registrant, this 21st day of APRIL, by sending same via First Class mail postage
prepaid, to:

Linda L. Berkowitz
Ladas & Parry
26 W 61st Street
New York, New York 10023.



Jeffrey R. Cohen, Esquire

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 2,389,268, Serial No. 75/610297

Filed: December 22, 1998

Registered: September 26, 2000

For Mark: SKYMASTER

-----X	:	
CASEIKO TRADING, INC.	:	
	:	
Petitioner,	:	
	:	
v.	:	<u>PETITIONER'S FIRST SET OF</u>
	:	<u>REQUESTS FOR PRODUCTION</u>
	:	
GUNZINGER BROS. LTD.	:	
TECHNOS WATCH CO.	:	
WELSCHENROHR	:	
	:	
Registrant.	:	Cancellation No.: 92045345
	:	
-----X	:	

Pursuant to TMBP 406.01 *et seq.*, Petitioner Caseiko Trading, Inc. (hereinafter referred to as "Petitioner") submits the following requests for production to Registrant Gunzinger Bros. Ltd. Technos Watch Co. Welschenrohr. Please produce the following documents at the offices of Millen, White, Zelano & Branigan, P.C. within thirty (30) days of service on Registrant.

INSTRUCTIONS AND DEFINITIONS OF TERMS

The instructions for these requests for production shall be the same as those found in Petitioner's First Set of Interrogatories. Unless otherwise noted herein, the terms used in these requests for production shall have the same meaning as those found in Petitioner's First Set of Interrogatories.

DOCUMENTS

1. All documents relating to Registrant's formation and the location of Registrant's principal place of business.
2. All documents relating to the dollar amount of Registrant's gross income derived from exploitation of the Mark since Registrant's inception, broken down by country if applicable.
3. All documents relating to the goods and/or services marketed by Registrant that have used the Mark.
4. All documents relating to any advertising, marketing or promotion that incorporates the Mark.
5. All documents relating to Registrant's use of the Mark in connection with Registrant's Goods and Services.
6. All documents relating to Registrant's use of the Mark in the United States.
7. All documents relating to a lack of Registrant's intent to resume use of the Mark in the United States in connection with Registrant's Goods and Services.

8. All documents relating to Registrant's intent to use the Mark in the United States in connection with Registrant's Goods and Services.

Respectfully submitted,

Caseiko Trading, Inc.

By: 

Jeffrey R. Cohen, Esquire

Millen, White, Zelano & Branigan, P.C.

2200 Clarendon Blvd., Ste. 1400

Arlington, Virginia

(703) 243-6333

Attorneys for Petitioner Caseiko Trading, Inc.

This 21st day of APRIL, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served on Registrant, this 21st day of APRIL, by sending same via First Class mail postage prepaid, to:

Linda L. Berkowitz

Ladas & Parry

26 W 61st Street

New York, New York 10023.



Jeffrey R. Cohen, Esquire

EXHIBIT B

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Linda L. Berkowitz
Ladas & Parry
26 W 61st Street

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

4-24-06

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7001 2510 0005 8443 4516

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-2501

CASEIRO-6-L ADM

EXHIBIT C

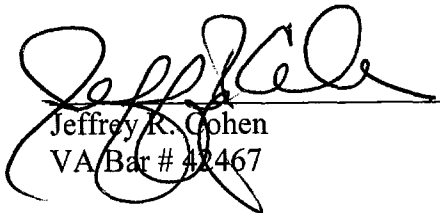
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X	:	
CASEIKO TRADING, INC.	:	
	:	
Petitioner,	:	
	:	<u>DECLARATION OF JEFFREY R. COHEN</u>
v.	:	
	:	
GUNZINGER BROS. LTD.	:	Cancellation No. 92,045,345
TECHNOS WATCH CO.	:	
WELSCHENROHR	:	
	:	
Registrant.	:	
-----X	:	

Under penalty of perjury, I, Jeffrey R. Cohen, Petitioner's counsel, declare the following:

1. On or around May 31, 2006, I called Registrant's counsel, Ladas & Parry, to inquire as to the status of Registrant's response to Petitioner's Discovery. I was informed that no one was available to take my call. I left a message for Robert Alpert.
2. The foregoing message was not returned.
3. On June 6, 2006, I called Robert Alpert.
4. Mr. Alpert informed me that he was fully aware of his client's failure to respond to Petitioner's Discovery. Mr. Alpert also informed me that he was waiting on a response from his client.
5. Registrant has not responded to Petitioner's Discovery.

Declared this 13 day of June, 2006.



Jeffrey R. Cohen
VA Bar # 42467

EXHIBIT D


**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X	:	
CASEIKO TRADING, INC.	:	
	:	
Petitioner,	:	
	:	
v.	:	<u>DECLARATION OF</u>
	:	<u>ADAM D. MANDELL</u>
	:	
GUNZINGER BROS. LTD.	:	Cancellation No. 92,045,345
TECHNOS WATCH CO.	:	
WELSCHENROHR	:	
	:	
Registrant.	:	
	:	
-----X	:	

Under penalty of perjury, I, Adam D. Mandell, Petitioner's counsel, declare the following:

1. On June 2, 2006, I called Registrant's counsel, Ladas & Parry, to inquire as to the status of Registrant's response to Petitioner's Discovery. I was informed that no one was available to take my call. I left a message for Robert Alpert.
2. The foregoing message was not returned.
3. On June 5, 2006, I again called Registrant's counsel. I again left a message for Mr. Alpert.
4. The foregoing message was not returned.
5. Registrant has not responded to Petitioner's Discovery.

Declared this 13 day of June, 2006.



Adam D. Mandell
VA Bar # 68397